

Village of Asharoken Comments on the USACE Draft Feasibility Report

Introduction

The Asharoken Storm Damage Reduction Project (ASDRP) is a joint program to protect and reduce storm-induced damage to both structures and the single access roadway, in the project area that comprises 2.4 miles of the northern section of the Village of Asharoken (VOA). The partners in this project are the US Army Corps of Engineers (USACE), the New York State Department of Environmental Conservation (NYSDEC) and the VOA. The Town of Huntington (TOH) has agreed to participate via an Inter Municipal Agreement (IMA) if needed regarding completion of the public access plan. The ASDRP has reached the milestone of the Draft Feasibility Study Report issued November 25, 2015 and is now in the Public Comment Period. The Feasibility Report is the culmination of a significant amount of time, effort and resources by the agencies and presents a thorough, detailed, and comprehensive analysis of the project area. This document will constitute the VOA comments to the aforementioned agencies regarding the Feasibility Report of November 2015.

Executive Summary

The VOA reaffirms its' selection of Alternative 1 as the Locally Preferred Plan based on a comprehensive analysis by its coastal advisor, First Coastal Consulting. The VOA finds the amount of Beachfill, 600,000 CY, in Alternative 1 may not be adequate to counter the erosion of the beach. The vulnerability of Asharoken Avenue is greater than accounted for in the Draft Feasibility Report (DFR). There is a substantial public benefit of roadway protection, especially in terms of public safety as shown by letters of support, petitions, and public comments from elected officials, public safety agencies, public utilities, healthcare and educational executives. There are mitigating factors that have not been adequately considered including the influence of the Northport Power Station on beach erosion and previous projects overseen by USACE. The VOA interprets that public access is not required by law due to the protection of nearby public property (Asharoken Avenue) and therefore the VOA should be exempted from that requirement.

1. Tentatively Selected Plan (TSP)

a. Alternative 1 for Tentatively Selected Plan (TSP)

The Feasibility Report identifies Alternative 4 as the TSP. Alternative 4 is comprised of 600,000 CY of Beachfill and Three West Groins located at the existing Section 103 Project which was constructed in 1997. The Asharoken Board of Trustees at its July 7, 2015 meeting voted to select Alternative 1 as the Locally Preferred Plan which is comprised of 600,000 CY of Beachfill only. Mayor Gregory D. Letica expressed the VOA position in a letter dated July 28, 2015 to Matthew Chelbus of NYSDEC stating that Alternative 1 is the preferred option of the village “with the understanding that the Board of Trustees has the right to select a different alternative based upon additional information that becomes known following further studies and public comment¹.”

Similarly, the Feasibility Report on page 67 states “The TSP is subject to change based upon public and agency review. The Corps’ requirement is to identify the plan that reasonably maximizes net benefits, consistent with the environmental laws of the nation. Since the costs and benefits of Alternatives 1,4, and 5 are so close, it is possible that one of these alternatives could be identified as the TSP if there are compelling reasons to select the plan.” (emphasis added)

The VOA reiterates its preference for Alternative 1 as the Locally Preferred Plan. The VOA submits the following compelling reasons that Alternative 1 be selected:

- Upon advise of its coastal advisor, First Coastal Consulting, “The Sand Only Alternative (Alternative 1) provides a positive benefit cost ratio with less potential for unforeseen impacts than either of the sand and groin Alternatives (Alternatives 4 and 5).”²
- There are 5 properties down drift directly affected by the two most westerly groins with one structure nestled between them. ³ All

¹ Letter (attached)

² First Coastal Consulting Analysis

³ Sheet 1 of 13 Asharoken Real Estate Map (attached)

property owners have expressed opposition to the groins; one of which has hired counsel and advised VOA, NYSDEC, and USACE of their opposition. It is reasonable to assume that the ASDRP could be significantly delayed or stopped entirely by legal action.

- There is broad based opposition to groins throughout the village due to the six decades of direct experience of the effects of the groins near the proposed Alternate 4 groin field in the western end and the jetties located at the National Grid Power Station at the eastern border of the project area.. It is not coincidental that they are adjacent to Asharoken's two critical erosion areas. This opposition is significant.
- Alternative 1 provides the least risk of adverse down drift impacts and is completely reversible.
- Funding for future re-nourishments is not assured and without the sand the groins could become exposed. If this were to happen they would be an eyesore, an impediment to traversing the beach and would likely lead to additional erosion to the west. This is not a chance that the Village is willing to take.

b. 600,000 CY of Beachfill

The VOA questions the amount of beachfill selected for both Alternative 1 & 4. The village understands that the TSP is:

- designed to function as described with 200 (check) year protection in Reach 1A & 1B and 50 year protection in Reach 2A.
- designed to avoid negative environmental impact in dredging
- subject to an actual beach survey at time of project construction where the amount of beachfill could be adjusted.

However, the amount of beachfill needed in the re-nourishment cycle calls for 31,000-35,000 CY of beachfill per year to maintain beach-15,000 CY from bypassing from Northport Power Station as well as 20,000 CY (Alternative 1) and 16,000 CY (Alternative 4).

The VOA notes that in a document from at least 2007 presented by NYSDEC/USACE, the construction plan calls for : “Initial Construction requires 580,000 CY (presently offshore) /Re-nourishment is Approximately 125,000 CY every 5 years (assumed upland material & Keyspan contribution)”⁴ The VOA questions why the beachfill amount has not increased since 2007 with notable storms of March 2010, Hurricane Irene 2011, Superstorm Sandy 2012 and numerous nor’easters that have severely eroded the project area since 2007.

On page 8 of the same document, the initial construction is listed at 600,000 from borrow area A or B at approximately \$12/CY. Re-nourishment is listed at 125,000 CY every 5 years which would give an amount of 25,000 CY/year.⁵ So here too we see a baseline of 25,000 CY/year in 2007 which has grown now to 31,000-35,000 CY/year in 2015.

The New York State DEC is allowing a one-time dredging permit for this project from a borrow site that has very compatible sand size. Because future funding for re-nourishment and appropriate sand grain size is not assured it would make sense to front load the project with as much sand from the borrow area as possible. Substantially more than the proposed 600,000 CYs of sand is available at the borrow site.

The USACE also needs to clearly identify sites of compatible upland sand that will be available in the future and try to quantify their level of certainty that the sand should be there.

The VOA strongly recommends that the beachfill amount for the TSP be increased substantially to account for the erosion between 2007 and 2015. VOA Coastal Advisor notes that the initial sand placement volume requires additional investigation.⁶

c. The Vulnerability of the Roadway

On page A-4 of the Engineering Appendix it states that “the approximately 900 foot section of Asharoken Avenue extending from the existing stone

⁴ 2007 Document, USACE, p. 4

⁵ 2007 Document, USACE, p. 8

⁶ First Coastal Consulting Analysis

groin northwest to where it starts uphill onto Eaton's Neck is the only portion of the roadway which is really threatened by erosion."

In researching damage to the roadway, our archives show that an approximate 1500 foot section eastward from the existing stone groin is also threatened by erosion. This area is from 413 to 475 Asharoken Avenue. During the Great Appalachian Storm of 1950, also known as the Thanksgiving Storm of 1950, several whole sections of the concrete roadway were pulled out to sea.⁷

Also, in the same area, Faded Laurels,⁸ a history of Asharoken, notes five occurrences since 1984 where the protective dunes were destroyed and one instance, Hurricane Irene, where they were badly damaged. In the instances where the dunes were destroyed, the roadway was exposed and undermined and in three of these events the utility poles were downed. Years of the storms occurrence are 1984, 1992, 1993, 2010, 2011, and 2012. The VOA proposes that page A-4 be amended to include that area and more importantly that all involved realize that this area combined with the seawall area comprise a half mile vulnerability in the western end.

2. Influence of Northport Power Station on TSP

Both the Feasibility Report and Appendix A: Engineering acknowledges the effects of the Power Station jetties. "Jetties by the Northport Basin located in the Long Island Power Authority (LIPA) Northport Power Station have contributed to the long-term erosion problems west of the west jetty. . . Since the original construction of the jetties in 1932, the shoreline just east of the jetties has experienced accretion, while the shores to the west and northwest (Asharoken Beach) have experienced continued erosion. Analysis of the sediment transport around the effluent pipes and the jetties indicate that an effective littoral block is formed near the outfall. The only sand that is currently being bypassed around the jetties is the inlet dredge material that is placed on the beach just west of the west jetty as part of the power plant operation." ⁹ (emphasis added)

⁷ Photos of Thanksgiving Storm of 1950

⁸ Edward A. T. Carr, *Faded Laurels, The History of Eaton's Neck and Asharoken* (New York, Heart of the Lakes Publishing) 1994

⁹ Feasibility Report November 2015, p. 3-4

In fact, the effect of the jetties is so significant that if they were removed and the lagoon filled, the beach would restore itself to 1932 conditions (pre jetty) within 10 years:

“4.6 Effect of Jetties. The shoreline response model GENESIS was applied to investigate the linear extent of the jetties influence on the study shoreline. The GENESIS model was validated for the time period 1995-2001 based on wave records in this period and measured shoreline positions. A hypothetical jetty removal was configured using the 2001 shoreline as a base to predict the future without jetties shoreline for a 10-year period. Model results indicate a restored shoreline similar to the pre-1932 condition. The down drift shoreline affected by the jetties show an impact over an approximately 6,000 ft distance. However, it requires a complete removal of jetties and closing of Northport Basin for restoration to a straight shoreline.”¹⁰

Two comments on the above:

- Due to ongoing operations and cost, the likelihood of the jetties being removed or shortened and lowered is non-existent:

“In order to increase the amount of material bypassing the inlet, the rock jetties could be significantly shortened or removed to achieve this goal. However, littoral material will continue to be trapped in the dredged channel and Northport basin unless the jetties are removed and channels closed. The option of removal of the jetties will not be pursued, because it will eliminate the access necessary for the operation of the LILCO plant, and as such would not be implementable.”¹¹

“It is assumed that the current coastal features (jetties, groins, Section 103 project, bulkheads, etc.) remain in place or are repaired as necessary. It is also assumed that the power plant will continue to operate much as it has with periodic intake channel dredged material placed on the immediate down drift (west) shore.”¹²

¹⁰ Appendix A: Engineering November 2015, p. A-41

¹¹ Appendix A: Engineering November 2015, p. A-81

¹² Feasibility Report November 2015, p. 31

- Therefore, project conditions will continue to deteriorate over time. In fact, a report documenting the screening of alternatives for storm damage reduction for the VOA that was prepared by USACE and presented in conjunction with NYSDEC to the Asharoken Board of Trustees in August of 2003, the jetty effect was measured as depriving the southeastern coastline of sand over 4000 feet west of the west jetty.¹³ In an interim update of the Engineering Appendix in 2014, that distance had increased to 5000 feet. Current conditions report that length of shoreline is now 6000 feet:

“The approximately 6,000 ft shoreline immediately west of the jetties experienced higher erosion rates due to combined effect of sediment supply deficit and storm activities; while the western 6,000 ft shoreline experienced less erosion due to continued but reduced supply of littoral material from the eastern Asharoken Beach shoreline.”¹⁴

During the space of 12 years of the study, the jetty effect over the shoreline area, Reach 2A, has increased by 50%. The VOA concludes there is a strong likelihood of further shoreline influence due to the jetties as the project area deteriorates over time. The VOA strongly recommends that the TSP and Feasibility Report account for this negative impact.

One consideration should be increased initial sand placement. The VOA would also recommend that the aggregate impacts of the power station features-the jetties, the cooling water outflow, the intake channel (and the nodal point) be fully accounted for. If there are no other factors involved and all of the blocked sand is bypassed the beach should restore itself as if the jetties, intake channel and outflow were removed. Yet, it is not doing so. Therefore other impacts of the power plant infrastructure may be responsible for the continuing erosion.

As noted by the VOA Coastal Advisor the affect of the Northport Power Station needs further investigation regarding the sediment budget.¹⁵

¹³ Screening of Alternatives for Storm Damage Reduction, September 2003

¹⁴ Appendix A: Engineering, November 2014, p. 33

¹⁵ First Coastal Consulting Analysis

3. Influence of the Nodal Point on TSP

In November 2013, National Grid (NG), began its tri-annual deposit of approximately 45,000 on the eastern section of the Project Area, Reaches 2B & 2A. Approximately half of the deposit was from dredged material and the other half was brought in from an upland source. The deposition was completed by December 11, 2013 and extended from the Nature Preserve, adjacent to #100 Asharoken Avenue to 232 Asharoken Avenue.

Shortly thereafter, there were two one day nor'easters and within two months, the bulk of the 50' wide x 6' deep beachfill deposit had been eroded.¹⁶ The VOA contacted USACE so that they could analyze the situation. It was determined that an offshore hole, created in the 1960's when 840,000 CY of beachfill was dredged to restore Asharoken Beach, resulted in an erosion hot spot corresponding to the eastern critical erosion area.¹⁷ The USACE and Suffolk County partnered on the project with USACE as project lead.

During the 2010 National Grid sand placement sand had to continually be placed in front of the nodal point area to maintain an adequate amount of beach to drive trucks over. This is very similar to what happened in 2013 and supports the fact that the Nodal Point is a factor in beach erosion.

The result of the site inspection in January 2014 by the USACE design team lead to further study and the creation of Alternative 5 which proposed eight groins for the eastern section of the beach and in effect certainly shows the continuing impact of both the jetties and the nodal point which accelerates and intensifies wave height and speed in the modeling. In fact, modeling was done using three groins to offset the nodal point effect and was found to be ineffective, hence, a plan for eight groins in the eastern section. It should be noted that Alternative 5 occupies the 6,000 feet described as the jetty effect. The impact on the beach is over 1 mile.

It is recommended by VOA Coastal Advisor additional modeling of the observed nodal point and borrow site need further investigation.¹⁸

¹⁶ USACE Draft Final Engineering Appendix, March 2015, p. 50

¹⁷ USACE Draft Final Engineering Appendix, March 2015, p. 50

¹⁸ First Coastal Consulting Analysis

4. Economics

The VOA disagrees with the amounts/value of all seven categories evaluated in the Without –Project Categories; the VOA includes other categories that should be considered; and disagrees on the methodology used regarding the economic analysis that is presented in Appendix D: Economics.

Methodology

a. Traffic Data

The methodology as related to the calculation of the amount of Commuters, the VOA posits that the real number of commuters, students, residents and others is 5147 per day for Asharoken, which includes northern Asharoken and Eaton’s Neck. This number is taken from a traffic survey conducted by the Town of Huntington Highway Department in September 2015.¹⁹ It is substantiated by prior studies:

It appears that the calculation used in the DFR used daily totals rather than weekly totals and should be adjusted.

| Annual Average Daily Traffic | | Annual Average Weekly Traffic | |
|------------------------------|--------------|-------------------------------|---------------|
| 2000 | 5,031 | 2000 | 35,217 |
| 2004 | 5,200 | 2004 | 36,400 |
| 2008 | 4,413 | 2008 | 30,891 |
| 2010 | 4,382 | 2010 | 30,674 |
| 2015 | 5,147 | 2015 | 36,029 |

In the 2015 study, a separate counter registered 3475 trips/day for the Peninsula which includes Northern Asharoken and Eaton’s Neck. Asharoken Avenue is designated (17) Urban Major Collector in the Federal-Aid System.²⁰

In Table 1: Key Socioeconomic Data, on page 9 of the Economics Appendix, the amount listed for Total Commuters is 696 for the Peninsula. School enrollment Total is 429 in the Peninsula. It is not clear if these two totals

¹⁹ Town of Huntington Traffic Survey, September 2015

²⁰ Federal-Aid System Map Asharoken

are additive in the calculations the analysis makes or separate. At any rate, taken alone or together, they are far short of the verified traffic data of 3475 for the Peninsula.

Consequently, the categories of Traffic Delays and Stranding would need to be adjusted upward substantially. There should also be a category for school disruption. As stated in the December 11, 2015 letter from the Northport-East Northport Union Free School District from Superintendent of Schools Robert L. Banzer, “As you know, a variety of weather conditions have resulted in historically and perennially devastating effects on Asharoken Avenue (You can view a vivid example of this at <https://vimeo.com/77839835>). Asharoken Avenue is the only route that resident students and staff of the Northport-East Northport School District can use to make their way to school and if the Bevin Road seawall is washed out, access will be lost. In the past this situation has caused the District to alter arrival and dismissal times based on the schedule of the tides and the intensity of the waves. It has also weighed heavily into the decision to close the entire District when dealing with weather related issues.”²¹ A significant economic value needs to be factored in for this disruption of the school district. Also, there is a knock-on effect for working parents who suffer economic loss due to disruption of their work to care for their children during these weather events. Parents have reported significant hardship and stress, especially during pop-up storms without advance warning.

b. Storm Data

Moreover the Corps analysis appears to reflect delays from a single storm event whereas actual experiences show an average of four storms per year during the last four years.²² In addition it is reasonable to assume that these events will increase in frequency and severity over the 50 years of the project life.

²¹ Photos of School Buses in 2009 & 2012

²² Coastal Flooding Spreadsheet

Without-Project Evaluated Categories Considerations: Bulkhead/Dune Restoration

The bulkhead and dune without project damage costs (Table 6, Page 19, Appendix D – Economics) appear to be inconsistent with the experience at the project site. The damages to the bulkhead exceed \$4.6 million, including a major rebuild in 2010 year for approximately \$3 million. In addition, damages to the dune in 2010 and 2012 amounted to approximately \$500,000. These experience based damage costs should be incorporated into the USACE damage analysis.²³

The Village feels that over the next 50 years the sea wall will need major repairs many times based on its performance since its initial construction in 1997. Based on actual damages in the preceding paragraph the estimated damages could be \$38 million and not the \$11,750,000 million as calculated in the DFR. Placement of sand in front of the wall will minimize or eliminate the costs for repairing the wall. The Feasibility Study should quantify the savings of placing sand in front of the wall and add this to the economic benefit of protecting the road. The cost of placing sand in Reach 1A may be much less over 50 years than not placing sand and repairing the wall. There is a substantial public benefit by expending less money to protect the road by placing sand instead of seawall repair. Therefore, an exemption of public beach access should be considered.

Emergency/Clean-up

As stated previously the methodology for the calculation of storm related damage was based on only one storm per year. Actual costs during the past five years amount to \$191,552 as opposed to \$11,800, as shown on table 6 page 19 in Appendix D.

Evacuation

The VOA disagrees with the costs associated with the evacuation category since it does not include the disabled. With a count of 150 disabled, an appropriate cost should be attributed with further investigation. These costs should include medical transport and facilities.

²³ Damages from past storms spreadsheet

Re-nourishment Costs

There is a reasonable amount of uncertainty on the future costs of the project that make it difficult for the Village to be able to adequately plan for. The Corps should provide a range of possible future costs based on a clearly explained range of both inflation factors and availability of compatible upland sand that would be placed on the beach. The Village needs a reasonable level of assurance that should it agree to the plan it will not result in financial hardships for future generations that move to Asharoken.

Without Project Further Considerations:

Real Estate

The Feasibility Study should also consider the economic impact of a breach of the road on the property values on Eaton's Neck should the road breach and become unusable. This could be in the millions of dollars and should be considered as part of the economic benefit of protecting the road

Public Safety

Also not evaluated was a cost associated with loss due to a large fire or multiple fires in an emergency situation such as a breach and or damage to utilities. With the mainland cut off, it is possible that the Eaton's Neck Fire Department could be overwhelmed and isolated as was the case with Breezy Point during Superstorm Sandy. Over 100 homes were lost due to fire because of inability to get equipment to the site.

US Coast Guard Station

The US Coast Guard Station, Eaton's Neck is not considered in the economic analysis with the DFR stating that it is self sufficient. The VOA disagrees with this as both operations and staff could be significantly affected. Operations would become more costly and difficult with the roadway closed or impassible. Staffing could be compromised as well. It should be noted that the personnel at the facility are comprised of families, including spouses and children whose work and education would be negatively impacted. Since the facility is within the VOA Police Department jurisdiction, public safety at the station could be compromised if the roadway is impassible. Lastly, consideration should be given to national security as the facility is a vital component of the Homeland Security Department.

5. The Public Benefit of the Roadway

As stated in Section 4, Economics, the VOA disagrees with the methodology of USACE in calculating the economic benefit of the roadway. Asharoken Avenue, the sole access route to Eaton's Neck, the US Coast Guard Station, Eaton's Neck and the Eaton's Neck Fire Department, is a very busy road with 5,147 trips per day, every day, year in and year out. While the village administration has stressed this importance over the last two years, recent events have heightened USACE and NYSDEC awareness of this reality.

- Letters of Support

The VOA has submitted 21 letters of support from all local officials, all public safety departments, and various stakeholders including health care, utilities, and civic groups.²⁴ The overriding message in all of the letters is that public safety and public health are in jeopardy with the roadway in its current state. Asharoken Avenue is subject to road closures and dangerous conditions that necessitated substantial public safety department involvement.²⁵ Listed are 16 events in the last 4 years, starting in January 2012 and commencing with the January 23, 2016 Blizzard that closed the road for 2 hours and required 32 hours of police monitoring. Careful attention should be paid to the time of public safety involvement as well as the notes that describe instances where passenger and vehicle rescues were needed, including a Suffolk County Police Department vehicle. The rescues required fire department assistance. Even more importantly, the occurrences are becoming more frequent as the project area deteriorates. Now, just a high tide with a NE wind of 10 mph creates overtopping and un-safe conditions on the roadway. It too should be noted that this has been on going for over a decade.

²⁴ List of Letters of Support and Copy of all Letters

²⁵ Major Coastal Flooding Events at Asharoken Avenue Seawall Area

Here are some excerpts from various public safety departments:

“Without Asharoken Avenue being passable at all times, the safety of the residents and the Eaton’s Neck Fire Department first responders are at risk and may well be compromised”.

Paul Boronow, Chief of the Eaton’s Neck Fire Department

“The Asharoken Storm Damage Reduction Project is set to protect more than just the beaches of Asharoken residents. The project protects Asharoken Avenue, which is the sole access road for the community of Eaton’s Neck, the Coast Guard Auxiliary, and the Eaton’s Neck Fire Department. Given the importance of Asharoken Avenue for this entire community, it is unfair for the burden of the restoration project to fall solely on the backs of the Asharoken residents.”

Andrew P. Raia Assemblyman 12th District

“During severe weather events and high tides when there is an overwash on Asharoken Avenue, the safety of these residents is put at significant risk since police and other responders may not be able to access the community.”

Christopher Hatton, Commanding Officer, 2nd Precinct, Suffolk County Police

“Asharoken Avenue is the only access to the northern portion of Asharoken and Eaton’s Neck. When these wash overs occur, over 1500 residents are totally cut off from main land Long Island. This means they cannot shop for food, pick up medical supplies or medication and that fuel to heat their homes cannot be delivered. More importantly, emergency services such as police, fire and EMS cannot respond to the effected areas.”

Bill Ricca, Chief of Police, Northport Police Department

“Routinely the seawall area is over washed resulting in rescue calls for stranded motorists and endangering people trying to help them. In the result of a severe storm the possibility of Asharoken Avenue becoming impassible or breached is real and this could severely impact the ability of the Northport Fire Department to respond to emergency calls.”

Joe Pansini, Chief Northport Fire Department

“On behalf of VNSHS staff and patients served we wish to note that the protection of Asharoken Avenue is critical to the public benefit by ensuring access to give needed home health and hospice care to residents of the area accessed, and to ensure availability of staff who live in the area to have access to make similar home visits outside of the area.”

Linda Taylor, MA, BSN, RN, Chief Executive Officer, Visiting Nurse Service & Hospice of Suffolk, Inc.

Certainly public safety and health should support the Village’s belief that it should be exempted from the requirement of public beach access.

- Petitions

The VOA also includes petitions from residents of Eaton’s Neck who are supporting our effort to have the roadway protected by implementing the Asharoken Storm Damage Reduction Project (ASDRP). These petitioners know that the project is about the roadway, which is why they are taking an active position on this project. These folks want the roadway protected because it has put them in dangerous situations, disrupted their lives, whether it be work, school, medical appointments or everyday living.

- December 9, 2015 Public Meeting with USACE & NYSDEC

Firstly, this public meeting was extremely well attended. Upwards of 500 people turned out; not only residents of Asharoken but also residents of Eaton’s Neck. The program included a poster board and power point presentations by USACE, local sponsor comments, and an hour long Q & A period.

All speakers were respectful and had well thought out remarks based on the impact of the ASDRP on their particular situation. Predominantly the comments of the public, especially Eaton’s Neck were about the roadway while Asharoken remarks centered on public access and cost. Mayor Gregory Letica of Asharoken gave an overview incorporating both aspects of the project and spoke forcefully that the public benefit of the roadway far exceeds any public benefit of access to the restored beach and that all of the requirements and conditions cannot be borne by Asharoken alone.

As previously mentioned, the VOA administration has been articulating this dichotomy for the last two years. It is our hope that our partners in the project, USACE, NYSDEC as well as all stakeholders: local, state and federal officials, recognize that the project is too narrowly drawn. Instead of the discreet 2.4 mile project area, the project needs to be considered through the prism of the Study Area which encompasses the area from the Northport Power Station to the entire Peninsula of Eaton's Neck. The letters of support, petitions, and public comments attest to this reality.

6. Nexus/Mitigating Factors

The VOA certainly understands the “**Need for Action**” called for on page 2 of the Draft Feasibility Report. That need is obvious and has been attested to by numerous entities. In fact, not one single person or entity has gone on record stating that the ASDRP should not be done or is not needed. Where the opposition centers on is that all the burdens (cost and public beach access) fall solely on the VOA while the benefits accrue to Eaton's Neck, Town of Huntington and Suffolk County. The VOA will work with these entities regarding the cost of the project. However, we need USACE to relieve the public access requirement. We urge consideration of following:

History on the Northport Power Station

- There is a long history here that all stakeholders know and was recently reiterated in the local newspaper, The Observer, in an editorial this past summer titled Public access caveat an appalling condition.²⁶ We would urge the reading of the complete editorial furnished with this document to understand the history. The conclusion of the editorial states: “ For 40 years the people of Asharoken have faced broken promises and damaging delays. It's time to get that job done, and it's time to drop the outrageous condition of public access. The federal and state government should live up to the commitment they made to the people of Asharoken and stop trying to extort from them an implausible demand for public access to a beach the public isn't fighting to get into.”

²⁶ The Observer, July 9, 2015, p.4

- The Draft Feasibility Study Report reinforces this attitude with the numerous references outlined in section 2 of this document.

History of USACE and Asharoken Sound Side Beach

For over sixty years, USACE has had a major role in decisions, approvals and actions that have lead to the erosion of the beach:

1. Approval of jetty for sand mining in the 1930's at power plant location.
2. Approval of lengthening and reconstruction of the jetties for the power plant
3. Approval of the discharge pipe (with NYSDEC) which with the jetties contributes to the total littoral block.
4. Approval and partner with Suffolk County in the 1960's dredging of 840,000 CY of sand offshore which has created a nodal point, or erosion hot spot by accelerating both the height and speed of wave action during storms.
5. Construction of Section 103 project that has had multiple damages/failures and has had three major rebuilds, each time incorporating larger armor stone (1.5 ton, 3 ton, 7 ton) to protect the "shallow depth" steel structure that too is severely corroded.
6. Originally "evaluated" with a 100' fronting beach which has never been realized, the property owners in this area have access to their beach only at low tide which greatly diminishes their recreational opportunities. It must be noted that these property owners signed easements for the Section 103 project without compensation with the understanding that they would be made whole regarding their beach property.

Prevailing Attitudes

There is a sense of unfairness and mistrust pervading the current project and for that reason this administration must call for the exemption of the requirement of public access so that this vital project to keep the roadway open and safe can be completed. The Village of Asharoken has stated that it is open to a compromise that will work for all parties involved.

It should also be noted that the difficulty factor for completing this project as currently structured is extremely high due to the disparate stakeholders:

1. Sound Side Homeowners (71)
2. Bay Side Homeowners with Beach Lots (46)
3. Beach Lot Owners (120)
4. Homeowners north of the Seawall/Section 103 (121)
5. Duck Island Homeowners (9)
6. Bay Side Homeowners with no beach lots (51)
7. Eaton's Neck Homeowners (554) with population of 1406

Each of these groups have different economic and social interests that are diametrically opposed in many cases. It is a recipe that has and will continue to tear apart the fabric of the village based on location and cause animosity with our good friends and neighbors in Eaton's Neck. We urge that policies that govern these projects be reevaluated and amended so that the public benefit can truly be realized in a project such as Asharoken's.

7. Public Access to the beach is not required by Federal Law

The applicable Federal statute (33 U.S.C. § 426e. Federal aid in protection of shores) provides in subdivision (d):

“(d) Shores other than public

Shores other than public will be eligible for Federal assistance if there is a benefit such as that arising from public use *or* from the protection of nearby public property *or* if the benefits to those shores are incidental to the project, and the Federal contribution to the project shall be adjusted in accordance with the degree of such benefits (emphasis added).”

The purpose of Engineering Regulation (ER) 1105-2-130 is to provide policies and guidelines for determining the extent of Federal participation in Federal projects for protection of shore erosion, hurricanes and abnormal tidal and lake flooding that result in damages or losses to coastal resources and/or development. (ER 1165-2-130, paragraph 1)

The Engineering Regulations are interpretative rather than substantive rules, because they are not published in the Federal Register or the Code of Federal Regulations and reflect general policy statements and guidelines. *Jones v. Rose*, 2008 WL 552666 (D. Oregon 2012), aff'd 495 Fed. Appx. 788 (9th Cir 2012)

ER 1165-2-130, paragraph 6(h), in discussing the policy for required public use, states “Unless the protection of privately-owned beaches is incidental to protection of public beaches (paragraph 9), they must be open to all visitors regardless of origin or home area, *or provide protection nearby public property* to be eligible for Federal assistance (emphasis added).”

ER 1165-2-130, paragraph 14 of Appendix A, defines “Public benefits” as “benefits resulting from public recreational use and the prevention of damage to publicly-owned facilities such as *highways*, buildings, parks, boardwalks, etc. (emphasis added).”

Pursuant to the Federal statute and the Engineering Regulations interpreting the statute, there is no requirement for public access to the beach, since there is a benefit to the public from the project’s protection of Asharoken Avenue, a public highway providing the only means of ingress and egress to the properties in the VOA and in Eaton’s Neck.

Pursuant to the Federal statute and the Engineering Regulations interpreting the statute, there is no requirement that the benefit to the private beaches of the property owners on Asharoken Avenue be incidental to the benefit to the protection of Asharoken Avenue. The “incidental” analysis only applies if the public benefit is the protection of public beaches, not if the public benefit is the protection of nearby public property.

8. Relief from Public Access Requirement

It is the conclusion of the VOA that it should be exempted from providing public access. The VOA has demonstrated the importance of keeping Asharoken Avenue open and safe at all times for a substantial population both within the Village but also to 1500 residents of Eaton’s Neck. The VOA’s legal argument interprets a major public benefit of the project as protecting the roadway.

The VOA has provided a detailed explanation of other mitigating factors including the effect of the Northport Power Station jetties, intake channel, cooling water outflow. The VOA feels that USACE has not adequately quantified the aggregate impacts of the Northport Power Station. Because of the man-made nature of these impacts permitted by USACE and NYSDEC, the VOA should receive relief from the requirement of public access. The VOA feels that the nodal point created by the 1964 dredging by USACE is another man-made influence that has not adequately been accounted for as well.

The VOA also believes that elimination or reduction of the public access requirement would have a very small impact of the public benefit of the project. The USACE in its Memorandum For the Record (MFR) of March 2015 states “The District agrees with the non-Federal sponsor’s assumption of *low recreational use. Presently, the recreational use is so low as to not warrant consideration of recreational benefits attributed to the project.*” ²⁷(Emphasis added)

The residents of the Village feel that there are significant liability issues with the public being allowed to use their private beach property. The Village feels that the Federal and State Governments have to provide indemnity for individual residents from any liability claims that may arise from public use of the beach. According to the NYSDEC the ASDRP is the first project of its kind to be done entirely on private property. The Village does not believe that adequate consideration to the liability issues has been given. A solution has to be found to this problem, one of which could be elimination of public access to the beach.

The VOA was created naturally through accretion of sand resulting in the formation of a tombolo. Beginning in 1932 when the first jetties were installed by the Metropolitan Sand and Gravel Company, the natural flow of sand has been interrupted. With the construction of the Northport Power Plant, the impediment to the natural flow of accreting sand deposits was further exacerbated and continues to this day. This combination has resulted in Asharoken now being classified as an eroding beach. This erosion is likely to effect a greater distance of the beach in the future as the

²⁷ USACE, MFR, p.1

Northport Power Station must be considered a permanent structure of the beach. The VOA urges consideration that Asharoken is different from all other barrier island beaches that are being eroded solely by storms and natural processes. Simply put, were it not for the Northport Power Station and nodal point, Asharoken might well still be an accreting beach. The VOA believes that this should be another consideration for the restoration of the beach without requiring public access.